

# Occupational Disease Evaluations

The Workers' Compensation Claims Assistance Bureau of the ERD is responsible for the Occupational Disease (OD) evaluation process. The process is used to determine whether a claimant's condition is a result of the employment and to determine compensability of claims under the OD statutes when an insurer has not accepted liability for the claim.

The process requires the claimant to attend a medical evaluation directed by the department. The medical evaluator submits a report of findings to the department. A copy of the report is then sent to the claimant and the insurer. If a dispute still exists over initial compensability as an OD, it is a dispute subject to the jurisdiction of the Workers' Compensation Court (WCC).

**Exhibit 6.1**  
**Occupational Disease Cases**  
**By Plan Type<sup>1</sup> and Fiscal Year of Evaluation Request**

Plan Types	FY02	FY03	FY04	FY05	FY06
Plan 1	29	30	25	38	10
Plan 2	63	64	28	54	19
Plan 3	81	96	71	101	35
<b>Total</b>	<b>173</b>	<b>190</b>	<b>124</b>	<b>193</b>	<b>64<sup>2</sup></b>

**Notes:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund.

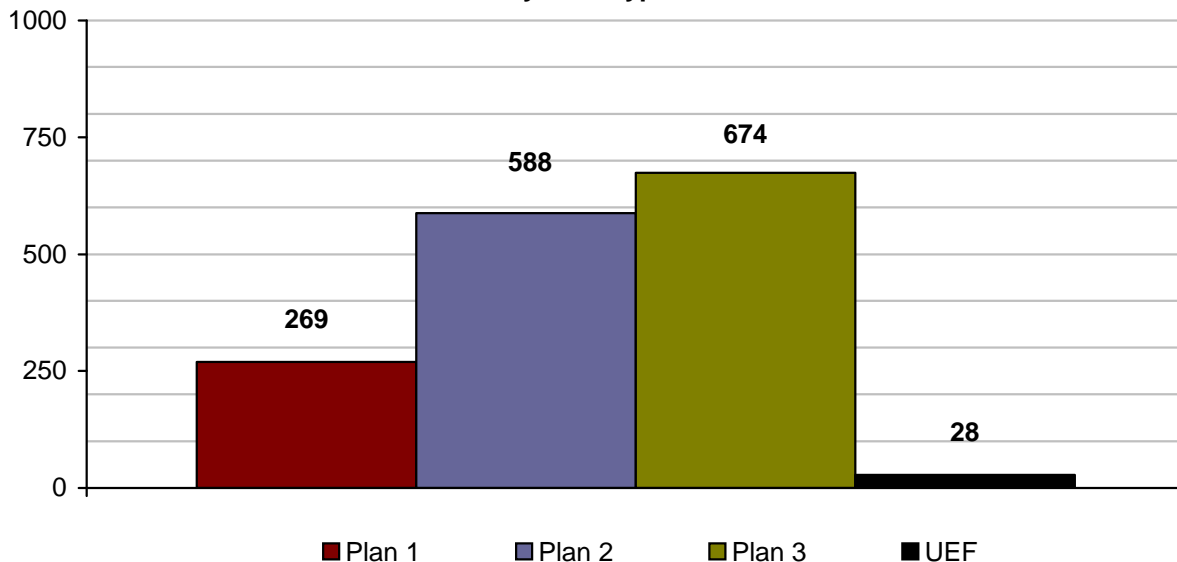
<sup>2</sup>The number of department evaluations has decreased due to repeal of the OD Act for injuries on or after 7/1/05. After 7/1/05, disputes go to mediation and then to the WCC.



## Mediation

The Workers' Compensation Mediation Unit of the ERD administers a mandatory process for resolving disputes dealing with benefits for both occupational injury and occupational disease claims. The mediation process is confidential, non-binding and informal. The mediator facilitates the exchange of information between the parties and assists with solutions aimed at resolving the dispute. Conferences are held either in person in Helena or by telephone. Often more than one conference is held in order to resolve the disputes on a claim. In FY06, the Mediation Unit received and processed 1,410 petitions, which involved 1,559 claims. A petition is a request for mediation and may include multiple claims.

**Exhibit 6.2**  
**Claims in Mediation FY06**  
**By Plan Type<sup>1</sup>**



**Exhibit 6.3**  
**Claims in Mediation**  
**By Plan Type<sup>1</sup> and Fiscal Year of Receipt**

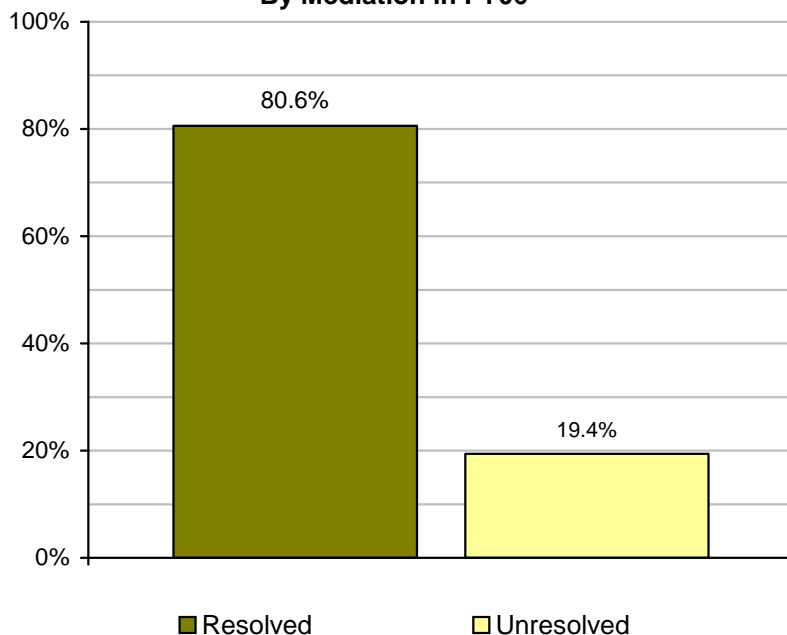
Plan Types	FY02		FY03		FY04		FY05		FY06	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Plan 1	247	17.7%	244	18.0%	273	19.3%	270	18.5%	269	17.3%
Plan 2	681	48.7%	625	46.1%	577	40.7%	542	37.1%	588	37.7%
Plan 3	444	31.7%	452	33.3%	551	38.9%	622	42.6%	674	43.2%
UEF	27	1.9%	36	2.7%	16	1.1%	27	1.8%	28	1.8%
<b>Totals<sup>2</sup></b>	<b>1,399</b>	<b>100%</b>	<b>1,357</b>	<b>100%</b>	<b>1,417</b>	<b>100%</b>	<b>1,461</b>	<b>100%</b>	<b>1,559</b>	<b>100%</b>

**Notes:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – Montana State Fund and UEF – Uninsured Employers Fund.

<sup>2</sup>Total count represents the number of claims, not the number of petitions. Due to coverage and claim updates to our database following mediation, the claim counts may be changed slightly over prior years.

**Exhibit 6.4**  
**Percent of Closed Petitions Resolved**  
**By Mediation in FY06**



- Over the past five years, the Mediation process has had an average resolution rate of 78%.
- From the date of the petition receipt to issuing a written recommendation, the average completion time for mediation was 42 days in FY06.

**Exhibit 6.5**  
**Mediation Petitions<sup>1</sup>**  
**By Fiscal Year of Receipt**

Petitions Received	FY02		FY03		FY04		FY05		FY06	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Pending <sup>2</sup>	0	0%	0	0%	0	0%	6	0.4%	114	8.1%
Closed	1,260	100%	1,232	100%	1,303	100%	1,330	99.6%	1,296	91.9%
<b>Total Petitions Received</b>	<b>1,260</b>	<b>100%</b>	<b>1,232</b>	<b>100%</b>	<b>1,303</b>	<b>100%</b>	<b>1,336</b>	<b>100%</b>	<b>1,410</b>	<b>100%</b>
Resolved	973	77.2%	975	79.1%	1,002	76.9%	1,028	77.3%	1,044	80.6%
Unresolved	287	22.8%	257	20.9%	301	23.1%	302	22.7%	252	19.4%
<b>Total Petitions Closed</b>	<b>1,260</b>	<b>100%</b>	<b>1,232</b>	<b>100%</b>	<b>1,303</b>	<b>100%</b>	<b>1,330</b>	<b>100%</b>	<b>1,296</b>	<b>100%</b>

**Notes:**

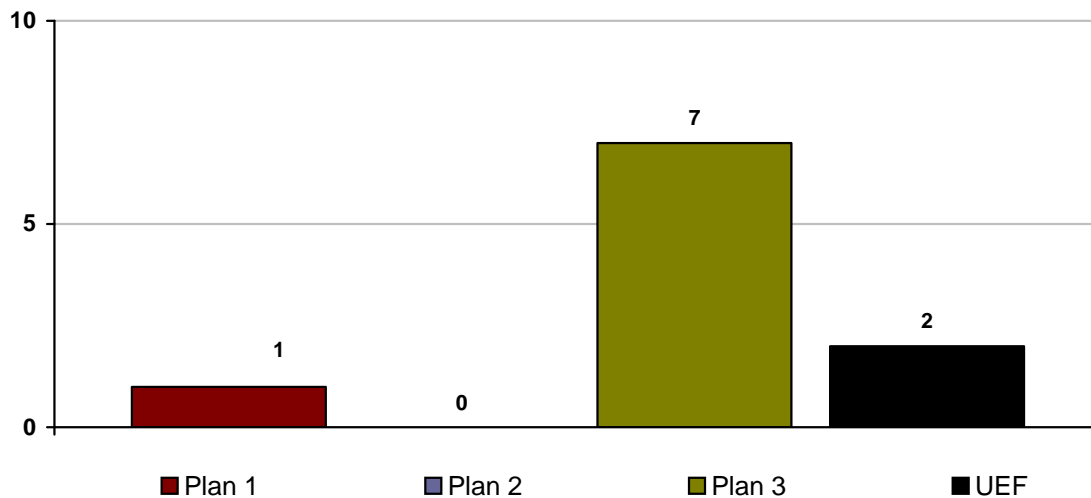
<sup>1</sup>A single petition may include multiple claims and/or multiple insurers.

<sup>2</sup>Eventual outcome of pending petitions will affect percent resolved.

## Contested Case Hearings

The DLI Hearings Bureau holds contested case hearings. Disputes heard at contested case hearings include appeals from orders and determinations issued by the ERD, assessments of penalties for uninsured employers, medical disputes between providers and insurers when payments to the claimant are not an issue and regulation of attorney fees. The 1997 Legislature transferred responsibility for hearing occupational disease claims to the WCC. In FY06, the Hearings Bureau received 10 new requests for contested case hearings.

**Exhibit 6.6**  
**Petitions Received by the Hearings Bureau FY06**  
**By Plan Type<sup>1</sup>**



**Exhibit 6.7**  
**Petitions Received by the Hearings Bureau**  
**By Plan Type<sup>1</sup> and Fiscal Year**

Plan Type	FY02		FY03		FY04		FY05		FY06	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Plan 1	0	0%	1	5.3%	0	0%	0	0%	1	10.0%
Plan 2	7	43.8%	6	31.6%	5	35.7%	3	27.3%	0	0%
Plan 3	2	12.5%	3	15.8%	7	50.0%	4	36.4%	7	70.0%
UEF	6	37.5%	9	47.4%	2	14.3%	4	36.4%	2	20.0%
PEO	1	6.3%	0	0%	0	0%	0	0%	0	0%
<b>Total</b>	<b>16</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>14</b>	<b>100%</b>	<b>11</b>	<b>100%</b>	<b>10</b>	<b>100%</b>

**Notes:**

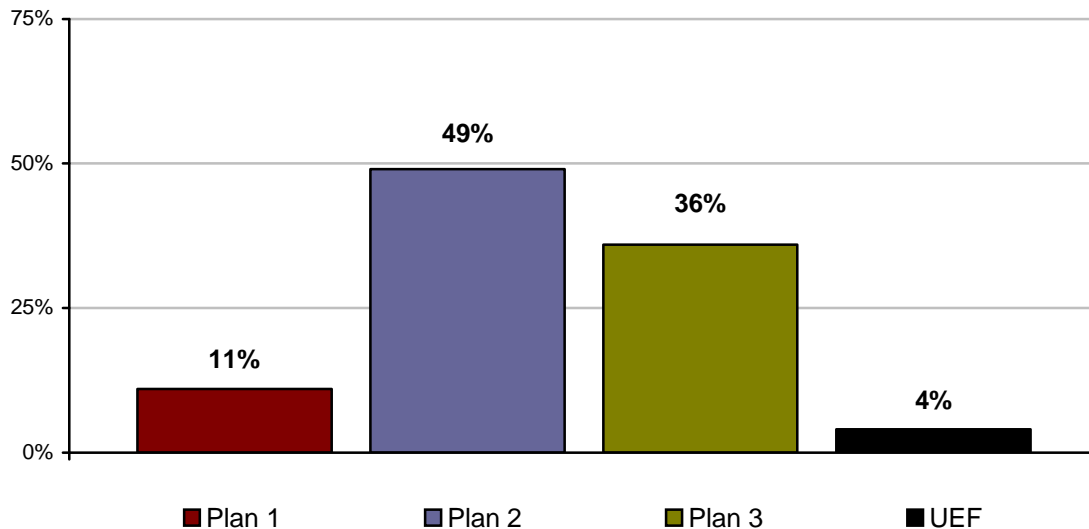
<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – Montana State Fund, UEF – Uninsured Employers Fund and PEO – Professional Employer Organization.

# Workers' Compensation Court

The WCC resolves disputes between insurers or employers and workers disabled as a result of occupational injuries or diseases. The court has original jurisdiction over benefit issues arising under the Workers' Compensation Act and the Occupational Disease Act. For an injury occurring after July 1, 1987, disputes must first be mediated. The court's exclusive jurisdiction also extends to disputes involving independent contractor exemptions under both the Workers' Compensation and Unemployment Insurance Acts, enforcement of DLI subpoenas, civil penalties for violations of workers' compensation provisions and the two-year return to work preference specified in section 39-71-317(2), MCA.

Court statistics were taken from the Workers' Compensation Court Website: <http://wcc.dli.mt.gov>.

**Exhibit 6.8**  
**Percent of Petitions Received by the WCC FY06**  
**By Plan Type<sup>1</sup>**



**Exhibit 6.9**  
**Petitions Received by the WCC**  
**By Plan Type<sup>1</sup> and Fiscal Year**

Plan Type	FY02		FY03		FY04		FY05		FY06	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Plan 1	29	11.7%	34	14.5%	28	10.7%	40	14.4%	34	11.2%
Plan 2	140	56.7%	139	59.1%	144	55.1%	124	44.6%	150	49.3%
Plan 3	62	25.1%	53	22.6%	75	28.7%	96	34.5%	108	35.5%
UEF	16	6.5%	9	3.8%	14	5.4%	18	6.5%	12	3.9%
<b>Total by Plan<sup>2</sup></b>	<b>247</b>	<b>100%</b>	<b>235</b>	<b>100%</b>	<b>261</b>	<b>100%</b>	<b>278</b>	<b>100%</b>	<b>304</b>	<b>100%</b>

**Notes:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – Montana State Fund, SIF – Subsequent Injury Fund and UEF – Uninsured Employers Fund.

<sup>2</sup>Petitions may involve more than one plan type.

**Exhibit 6.10**  
**Decisions by the WCC**  
**By Fiscal Year**

<b>Decisions</b>	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>
Telephone Conference Resulting in Disposition	3	0	0	0	0
Bench Rulings without Written Decisions	2	0	1	3	1
Decisions	103	145	158	161	182
Orders on Appeal	4	0	0	1	1
Substantive Orders	26	32	30	41	27
Attorney Fee Orders	0	5	7	2	2
Orders on Cost	14	15	4	2	2
Disposed of by Telephonic Conference	2	0	0	0	0
<b>Subtotals</b>	<b>152</b>	<b>197</b>	<b>200</b>	<b>210</b>	<b>215</b>
Petitions Dismissed by Agreement	118	72	88	83	96
<b>Totals</b>	<b>270</b>	<b>269</b>	<b>288</b>	<b>293</b>	<b>311</b>

**Exhibit 6.11**  
**Full and Final Compromise Settlements by the WCC**  
**By Plan Type<sup>1</sup> and Fiscal Year**

<b>Plan Type</b>	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>
Plan 1 Self-Insured	5	5	7	1	1
Plan 2 Private Insurers	16	12	13	6	6
Plan 3 Montana State Fund	24	24	17	10	15
Plan 4 Subsequent Injury Fund	0	0	0	0	0
Plan 5 Uninsured Employers Fund	0	0	0	0	0
<b>Total</b>	<b>45</b>	<b>41</b>	<b>37</b>	<b>17</b>	<b>22</b>

**Note:**

<sup>1</sup>Plan types: Plan 1 – Self-insured Employers, Plan 2 – Private Insurance, Plan 3 – Montana State Fund, SIF – Subsequent Injury Fund and UEF – Uninsured Employers Fund.



# **Significant Workers' Compensation Court Cases**

Case summaries are taken from the WCC Website: <http://wcc.dli.mt.gov>.

## **ROBERT BENHART vs. LIBERTY NORTHWEST 2007 MTWCC 3**

**Summary:** Petitioner suffered a work-related injury on January 15, 2003. Prior to his injury, he had been diagnosed with Hepatitis C. Subsequent to Petitioner's injury, and for unrelated reasons, his Hepatitis C worsened and his health declined. Respondent denied liability for PTD benefits, arguing that although Petitioner's Hepatitis C predated his work related injury, the Hepatitis C did not cause Petitioner's health to decline until after his work related injury. Petitioner argued that even without taking his Hepatitis C into account, his work related injury rendered him permanently totally disabled.

**Held:** The parties agreed that Petitioner's condition prior to the effects of the Hepatitis C limited Petitioner to, at most, a part-time job which his treating physician approved only on a trial basis and that it was reasonably foreseeable that Petitioner would be physically unable to function at that level. However, no job analyses were submitted. The Court concludes that even without taking Petitioner's subsequent complications from Hepatitis C into account, he is permanently totally disabled.

## **RICHARD D. HINMAN vs. MONTANA STATE FUND 2007 MTWCC 2 *Appealed to Supreme Court January 14, 2007***

**Summary:** Petitioner petitioned the Court for workers' compensation benefits because of chemical exposures occurring during his employment with Specialized Automotive.

**Held:** Petitioner is not entitled to any workers' compensation benefits. Petitioner has not met his burden of proving his chronic obstructive pulmonary disease was caused by the chemical exposures occurring during his employment with Specialized Automotive.

## **ANNA JOHNSON vs. LIBERTY MUTUAL FIRE INSURANCE COMPANY 2007 MTWCC 1 *Appealed to Supreme Court February 2, 2007***

**Summary:** Petitioner alleges she fell at work, injuring her neck and upper back, and that she reported the injury to co-managers who left that employment shortly thereafter and apparently failed to file the report. Petitioner later filed a claim form with Respondent, alleging a progressive neck injury. Respondent accepted Petitioner's claim regarding degenerative changes in her neck, but has since denied her upper back claim.

**Held:** Although it is certainly plausible that an injured worker may submit a report of injury which a supervisor then fails to file properly, the empirical evidence presented in this case does not support Petitioner's claim. Petitioner's extensive contemporary medical records contain no evidence that Petitioner ever claimed that she was injured in a fall at work until nearly two years after she left this employment. Petitioner's claim is denied.

**SCOTT PALMER vs. SAFECO  
2006 MTWCC 44**

**Summary:** Respondent moved for summary judgment regarding Petitioner's request for ongoing medical benefits, arguing that because Petitioner had not used his benefits for more than 60 consecutive months, his benefits terminated pursuant to § 39-71-704(1)(e), MCA (1997). Petitioner responded that the statute should be tolled because he was receiving medical treatment for difficulties which he was unaware stemmed from his industrial accident at the time of treatment.

**Held:** Because § 39-71-704(1)(e), MCA (1997), is a statute of repose, it cannot be tolled. Therefore, Respondent's motion for summary judgment is granted.

**MARIL BeVAN vs. LIBERTY NORTHWEST INSURANCE CORPORATION  
2006 MTWCC 38**

***Appealed to Supreme Court December 15, 2006***

**Summary:** Petitioner was a customer service and sales representative for Blackfoot Telephone Communications. She was involved in a motor vehicle accident during an authorized paid break as she returned to work. Respondent denied liability on the grounds that Petitioner was outside the course and scope of her employment.

**Held:** Petitioner was within the course and scope of her employment when she was involved in a motor vehicle accident during an authorized paid break.

**RICHARD POPENOE vs. LIBERTY NORTHWEST INSURANCE CORPORATION  
2006 MTWCC 37**

***Appealed to Supreme Court December 15, 2006***

***Appeal Dismissed, Case Remanded to WCC February 7, 2007***

***Order Vacated and Withdrawn Pursuant to Stipulation of Counsel and Order and Judgment of Court February 8, 2007***

**Summary:** Petitioner moved for summary judgment after Respondent denied his claim for workers' compensation benefits. Respondent filed a cross-motion for summary judgment. Petitioner broke his ankle when he fell in his employer's parking lot while removing his bicycle from the back of a friend's truck approximately five minutes before the start of his shift. Petitioner claims that his injury is compensable under the "premises rule," while Respondent argues that Petitioner's injury is not compensable because it falls under the "going and coming" rule, now codified by § 39-71-407, MCA, and because Petitioner's actions at the time of his injury were not within the scope of his employment.

**Held:** Summary judgment is granted in favor of Petitioner. Montana case law has established that after an employee has arrived at his employer's premises and he is no longer engaged in traveling to or from the site of his employment, an injury suffered by the employee is compensable under the "premises rule." Petitioner is entitled to attorney fees and a penalty because, in light of the applicable statutes and case law, Respondent's denial of benefits was unreasonable.



**RODNEY BARNARD vs. LIBERTY NORTHWEST**  
**2006 MTWCC 35**  
***Appealed to Supreme Court November 13, 2006***

**Summary:** Petitioner petitioned for a lump-sum conversion of his permanent total disability benefits, testifying that he would use the money for a new mobile home, driveway improvements, a newer motor vehicle, and additional cattle. Respondent responded that Petitioner's request should not be granted because his lump sum exceeds the \$20,000 limit permissible under § 39-71-741, MCA, or in the alternative, because Petitioner will not use the lump sum to obtain necessities of life.

**Held:** Section 39-71-741(1)(c), MCA, limits the Department of Labor and Industry to awarding lump-sum conversions in part to a total of \$20,000. However, it does not limit conversions in whole to that amount. Petitioner's planned use for the proposed lump-sum conversion meets Petitioner's necessities of life pursuant to § 39-71-741(1)(c), MCA. Furthermore, it is in his and his family's best interests and is therefore granted.

**EULA MAE HIETT vs. MONTANA SCHOOLS GROUP INSURANCE AUTHORITY,  
MONTANA STATE FUND and LIBERTY NORTHWEST INSURANCE CORPORATION**  
**2006 MTWCC 33**

**Summary:** Following briefing by the parties, the Court determined whether the Montana Supreme Court's ruling in this case abrogates the exclusion of palliative and maintenance care set forth in § 39-71-704(1)(f), MCA; and whether the criteria for furnishment of secondary medical services set forth in § 39-71-704(1)(b), MCA, may still apply under any circumstances or whether this section was wholly abrogated by *Hiett*.

**Held:** The *Hiett* decision has not abrogated the exclusion of palliative and maintenance care, and the secondary medical benefits provision has not been wholly abrogated by *Hiett* and may still apply to particular claims.

**MONTANA STATE FUND vs. MICHAEL H. PARDIS, D.C.**  
**2006 MTWCC 21**

**Summary:** Insurer appealed ruling by hearing officer for the Department of Labor and Industry which held that insurer was liable for payment to chiropractor for treatments provided to four patients even though those treatments far exceeded statistical averages presented by insurer's experts. The insurer did not obtain independent medical examinations of the patients and therefore could not prove the patients had reached maximum medical improvement prior to the cessation of treatment. Furthermore, as regards one of the four patients, the insurer did not have the authority to direct the patient to obtain treatment from another physician.

**Held:** The Final Agency Decisions are affirmed.

**MARK PETERSON vs. MONTANA SCHOOLS GROUP INSURANCE AUTHORITY**  
**2006 MTWCC 14**

***Appealed to Supreme Court 05/05/06***  
***Dismissed by Stipulation July 26, 2006 at DA-06-0363***

**Summary:** Petitioner suffered a compensable occupational disease in his right arm and shoulder, rendering him unable to return to his custodian/maintenance position with the school district. After Petitioner reached maximum medical improvement and his treating physician approved five job analyses, Respondent terminated Petitioner's temporary total disability benefits. However, Petitioner's treating physician only considered whether Petitioner was employable in the five job analyses based solely upon the condition of Petitioner's shoulder, and did not take Petitioner's other serious health problems into consideration.

**Held:** Petitioner's occupational disease, taken in conjunction with the rest of his health problems and his lack of education or skills, renders him unemployable. Because he has reached maximum medical improvement, he is no longer eligible for temporary total disability benefits, as defined by § 39-71-116(34), MCA (1997). Petitioner is therefore permanently totally disabled within the meaning of § 39-71-116(24), MCA (1997).

**LORI AUCHENBACH vs. UNINSURED EMPLOYERS' FUND**  
**and UPPER DECK BAR & GRILL**  
**2006 MTWCC 13**

**Summary:** Respondent Uninsured Employers' Fund filed a motion to dismiss based on lack of jurisdiction due to Petitioner's failure to file her Petition for Hearing with the WCC within sixty days after the mailing of the Mediator's Report and Recommendation, as required under § 39-71-520(2), MCA (2003). The UEF, however, had failed to respond to the Mediator's Report and Recommendation within twenty-five days, as required under § 39-71-2411(6), MCA (2003). Moreover, Respondent failed to respond to the Recommendation within sixty days, leaving Petitioner in the dark regarding Respondent's position on the Recommendation and whether settlement had been achieved. Pursuant to § 39-71-520(2)(c), MCA (2003), Petitioner could not file a petition before this Court until there had been a failure to reach settlement through mediation. Until Respondent fulfilled its statutory obligation to either accept or reject the Mediator's Report and Recommendation, there was no failure to reach settlement.

**Held:** Respondent's motion to dismiss is denied. As a fundamental matter of equity, this Court cannot allow a party to sit on its hands while a time limitation runs on a *pro se* petitioner while, at the same time, ignoring its own affirmative statutory duty to act. Respondent is equitably estopped from relying on § 39-71-520(2)(c), MCA (2003), because it failed to comply with § 39-71-2411(6), MCA (2003), by failing to respond to the Recommendation within twenty-five days. The elements of both equitable estoppel and estoppel by silence or acquiescence are satisfied in this case. Respondent cannot stay silent in the face of a statute requiring it to respond, continue its silence after receiving a letter from the Mediation Unit requesting Respondent's response, and then rely on a time limitation set forth in a statute which precludes Petitioner from filing a petition with this Court prior to Respondent's response to the Recommendation.

**CURTIS M. MICHALAK vs. LIBERTY NORTHWEST INSURANCE CORP.**  
**2007 MTWCC 14**  
***Appealed to Supreme Court March 22, 2007***

**Summary:** Petitioner attended a company picnic hosted by his employer at the employer's lake home and was injured while riding a wave runner on the water. Respondent denied liability.

**Held:** Section 39-71-118, MCA, which defines "employee" does not preclude Petitioner from receiving benefits because he was acting within the course and scope of his employment at the time of his injury even though he was engaged in a recreational activity.

**DONALD WILKES vs. MONTANA STATE FUND**  
**2007 MTWCC 9**  
***Appealed to Supreme Court March 23, 2007***

**Summary:** Petitioner moved for summary judgment, arguing that § 39-71-703, MCA(2001), is unconstitutional to the extent that it denies permanent partial disability benefits for age, education, and lifting to claimants who do not suffer a wage loss. Respondent also moved for summary judgment, arguing that § 39-71-703, MCA, is constitutional.

**Held:** Petitioner's motion for summary judgment is denied. Respondent's motion for summary judgment is granted. In 1995, the Legislature codified benefits based on age, lifting, and education for permanent partial disability claimants who suffered a wage loss after returning to work while providing no additional benefits based on age, education, and lifting to those claimants who received an impairment award but suffered no wage loss after returning to work. Because these two classes are not similarly situated, the Court concludes there is no violation of Petitioner's equal protection rights.

# **Supreme Court Decisions on Workers' Compensation and Occupational Disease**

These decisions can be found at the State Law Library Website: [www.lawlibrary.state.mt.us](http://www.lawlibrary.state.mt.us).

## **STAVENJORD vs. MONTANA STATE FUND** ***Appeal from the WCC. Reversed.***

The WCC determined 39-72-405 (2), (1997) to be a violation of equal rights. Stavenjord sought retroactive application and recovery of common fund attorney fees for Stavenjord-type benefits secured for non-participating claimants. Applying the Chevron factors, the court determined retroactive application of the Stavenjord decision was proper. Stavenjord did not create a common fund, and counsel was not entitled to recover fees from cases brought by other claimants.

The case was remanded to the WCC for identification of potential beneficiaries under this decision, and notification of their interests.

## **NOONKESTER vs. MONTANA STATE FUND** ***Appeal from the WCC. Affirmed.***

The injured employee was a minor. A workers' compensation claim was made on his behalf. Upon majority, the employee sought to repudiate his workers' compensation claim and proceed in tort.

Following repudiation of his workers' compensation claim, the WCC correctly determined it did not have jurisdiction over the dispute as to whether or not the employee was injured in the course and scope of employment.

## **VOGEL vs. INTERCONTINENTAL TRUCK BODY, INC** ***Appealed from Ninth Judicial District Court. Affirmed.***

Employee had knee problems and filed a workers' compensation claim. After surgery, his problems continued, and included problems performing his job. He was terminated and brought a wrongful discharge action against his employer, Intercontinental. In his workers' compensation claim, he contended he was unable to perform his job.

The four elements of judicial estoppel are (1) aware that he'd been fired when he filed for workers' compensation (2) succeeded in maintaining original position (3) took an inconsistent position in the wrongful discharge case; and (4) allowing him to change his position would injuriously harm the employer.

The district court correctly granted the employer's motion for summary judgment under judicial estoppel.

**OBERSON vs. FEDERATED MUTUAL INSURANCE CO.**  
***Appeal from District Court of the Second Judicial District***

Employee filed a Michigan workers' compensation claim, and a personal injury claim against a third-party in Montana, and won. The Michigan workers' compensation insurer sought subrogation. The Supreme Court ruled Montana law prevents subrogation until the employee was made whole. The WCC had no jurisdiction over this subrogation issue due to the specific language in 39-71-2905.

**BAIN vs. LIBERTY MUTUAL FIRE INSURANCE CO.**  
***Appeal from the WCC. Affirmed.***

Employee claimed injury due to hepatitis B vaccinations urged by her employer. The WCC found that the employee did not timely notify her employer, did not timely file her claim, and did not demonstrate a causal relationship between the vaccinations and her conditions. The WCC findings were supported by substantial credible evidence.

**FLYNN vs. UNINSURED EMPLOYERS' FUND**  
***Appeal from the WCC. Affirmed.***

Employee injured his back. The employer did not have workers' compensation coverage, and the claim was handled by the UEF. The UEF denied the claim as exempt from mandatory coverage under household and domestic services exemption. The UEF's determination was made on November 21, 2002, but was not mailed until November 25, 2002. The employee requested mediation on February 22, 2003.

The statute establishes the 90-day time to appeal commences when the determination is made, not when it is mailed. The employee's request for mediation is time-barred under 39-710-520 (2001) and the UEF's decision is unappealable.

**QUIGG vs. MONTANA STATE FUND**  
***Appeal from the WCC. Affirmed.***

Quigg was injured while incarcerated and performing community services. He sought indemnity benefits. The WCC ruled, and the Supreme Court affirmed, he was not eligible for rehabilitation benefits while incarcerated, pursuant to 39-71-744 (1991), nor was he eligible for indemnity benefits pursuant to 39-71-701 and 703 (1991), while incarcerated. Even if he were entitled to indemnity benefits, he had earned no wages and therefore could not recover any amount.

**COLMORE vs. UNINSURED EMPLOYERS' FUND**  
***Appeal from the WCC. Affirmed in part, reversed in part.***

The employer had an agricultural operation for which claimant was temporarily employed. The Supreme Court found the evidence sufficient to support the WCC conclusion that the employer operated the ranch for profit, and therefore workers' compensation coverage was mandatory.

The Supreme Court reversed the WCC ruling on calculation of benefits. The Supreme Court concluded that 39-71-520 (1990) applies. The widow failed to appeal the determination of benefits within 90 days. The WCC erred in increasing the weekly benefits.

**OTTESON vs. MONTANA STATE FUND**  
***Appeal from the WCC. Affirmed.***

Employee sought to convert permanent total benefits to permanent partial benefits when he reached age 65. The Supreme Court upheld the WCC finding that 39-71-710 precludes the conversion of PTD benefits to PPD benefits upon retirement. The Montana State Fund acted reasonably, and employee was not entitled to costs, fees or penalty.